IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10205 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHANSUKHLAL H MANKAD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10205 of 1995

MR PV HATHI for Petitioner No. 1

MR BY MANKAD, AGP for Respondents No. 1-2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 15/02/2002

ORAL JUDGEMENT

1. Shri Dhansukhlal H.Mankad, petitioner since deceased (now through his legal heirs and representatives) has filed this petition with a prayer to direct the respondent No.1 Seretary, Education Department

and the Commissioner of Higher Education - respondent No.2 to extend the pension scheme to Non-teaching staff employees of all Non-Government Grant-in-Aid Colleges effective from 1.1.1973 as has been done for teaching staff under Government Resolution dated 25th April, 1991, which has been produced by the petitioner at Annexure `A' to the petition. The petitioner further prayed that this Court may direct the respondent to grant all consequential benefits to the petitioner like arrears of pension on and from 1.1.1980 and to pay the pension as may be fixed regularly every month in the same form and manner as has been granted to all teaching staff members of Non-Government Grant-in-Aid Colleges with a further direction to pay the difference of pension with 15% interest.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner on establishment of Darbar Gopaldas Mahavidyalaya at Alibada in the District of Jamnagar joined as Office Superintendent on 12.9.1955 in the pay scale of Rs.65-3-80-5-125 where he worked upto 30th November, 1958. In petition it has been stated that petitioner thereafter continued to hold a post of Non-teaching Staff member of Non-Government Colleges upto 31st August, 1980.

2.2 It has been stated in the petition that the teachers as well as the non-teaching staff members of those colleges had made a demand for introduction of pension scheme as was given to the teaching and non-teaching staff of all Government Colleges. The matter was under consideration of the Education Department and by a Government Resolution dated 15.10.1984 the Government of Gujarat introduced the scheme of pension for teaching staff only with a cut out date of 1.4.1982. The Government further issued a resolution dated 3.7.1987 extending the same benefit of pension scheme to the non-teaching staff of such colleges effective from 1.4.1982.

2.3 It has been stated that some of the Professors' Association filed writ petition before this Court challenging the said resolution being Special Civil Application No.4449/88 contending, inter alia, that the cut off date of 1.4.1982 was arbitrary and was otherwise illegal.

2.4 The petitioner stated that this Court in the case of Gujarat State Retired Professors Association Vs.

State of Gujarat reported in 1991(1) GLH 159 decided by this Court (Coram: C.K.Thakkar, J (as he was then)) allowed the petition after considering the judgment of the Hon'ble Supreme Court in the case of Nakara Vs. Union of India reported in AIR 1982 SC 130 the artificial date between the employees who retired prior to April 1, 1982 and subsequently thereto can never be said to be based on an intelligible differentia nor with the object sought to be achieved thereby. The classification is arbitrary, irrational and discriminatory. All the professors who retired even prior to April 1, 1982 must be held entitled to all the retirement benefits.

2.5 It has been stated that in view of the aforesaid judgment the Government through its Education Department issued another resolution dated 25.4.1991 extending the benefit of pension scheme to all those who retired after 1.1.1973 instead of 1.4.1982 and accordingly all teaching staff serving in University or Non-teaching Staff were given benefit of pension scheme effective from 1.1.1973. The copy of the said resolution has been produced in the said petition.

2.6 The petitioner therefore submitted that the teaching staff of non Government and University Colleges were covered by the Pension Scheme and are receiving the said benefits of pension while the other section of the same institutions and colleges are not given the said benefit of pension scheme even though there is no justification to offer separate treatment to non-teaching staff members of such colleges.

2.7 In view of the aforesaid position, the petitioner made an application on 12.6.1991 requesting the Principle of V.M.Mehta College to extend the benefit of pension scheme to them as well. The Government replied to the said letter that the mater is under consideration.

2.8 It has been stated that said application was forwarded by the Principal of the Municipal College, Jamnagar on 19.7.1991 to the Education Department with recommendation to grant the benefit of pension scheme to non-teaching staff members who were retired prior to 1.4.1982. The petitioner also made reminder on 28.9.1991 to the respondent authority also in this behalf enclosing the copy of the judgment and also made application to the Minister of Education Department.

2.9 In view of the same, the petitioner has also relied upon the Nakara's case and ultimately he has filed this petition as indicated earlier somewhere in November,

1995.

2.10 The petitioner has contended that some of the ex-employees of M.S.University, Baroda who retired prior to 1.4.1982 had filed writ petition before this Court praying for extension of the pensionary benefits to them also irrespective of the cut off date which has been fixed by the Education Department. The said issue was raised by the ex-employees who were also non-judicial staff of the M.S.University, Baroda. The said petition being Special Civil Application No.6045 of 1992 came up for hearing before this Court (Coram: R.K.Abichandani, J.) and this Court by order dated 19th July, 1996, issued a direction to the respondents to take a decision in the matter for modifying the cut off date from 1.4.1982 to 1.1.1973 in light of the decision rendered by this Court in the case of teaching employees within four weeks from the date of the receipt of the said order.

2.11 It has been further stated that pursuant to the said judgment, the Education Department passed a resolution on 23.9.1996 extending the pension scheme benefit also to the non-teaching staff of the University by modifying the cut off date and by permitting those 18 employees of the M.S.University, Baroda, and granted them the benefit of the said pension scheme from the date of their retirement which in cases of those employees were prior to 31.3.1982.

2.12 It may be stated that, during pendency of the petition, original petitioner Dhansukhlal H.Mankad died and his heirs and legal representatives were brought on record by filing Civil Application No.990 of 2002 in Special Civil Application No.10205 of 1995 somewhere in March 2000.

3. Mr.P.V.Hathi, learned advocate for the petitioner submitted that in view of the judgment of this Court in the case of Gujarat State Retired Professors Association (supra) and in the matter of Rajaram Ram Krishna Bhatt and others decided by this Court R.K.Abichandani, J. in Special Civil Application No.6045 of 1992, the present petition ought to be allowed and this Court may grant the similar relief in this behalf.

3.1 Over and above, he has also relied upon the judgment of the Hon'ble Apex Court in the case of Dhan Raj and others vs. State of Jammu & Kashmir and others reported in AIR 1998 SC 1747. In that case on page 1751 at para 14 the Hon'ble Supreme Court has observed as under:

"Even otherwise, we do not find any justifiable criteria for the State Government to draw the line between those who retired earlier and those retired after 9th June, 1981. Both such set of employees were equally placed in the same Undertaking/Corporation temporary in character and all having served in the organisations for more than 20 years. In fact, appellants have served with the Government for more than 30 to 40 years. The person serving for such a long period earns his legitimate expectation. It is not something which he seeks as a begging bowl. It is inappropriate for a State Government to take up a stand to get its own order to be held illegal, by giving restrictive interpretation to deny benefit to its own employees who had worked for such a long period."

3.1(A) Thereafter the Hon'ble Supreme Court after relying upon the judgment of Nakara's case (supra) in para 15 the Hon'ble Supreme Court has held as under:

"For the aforesaid reasons and the findings recorded on the facts and circumstances of this case, the appeal stands allowed. The impugned order of the High Court dated 5th September, 1995, passed in L.P.A. No.62 of 1993 is set aside. The appellants would be entitled for the pensionary benefits in terms of and as held by learned single Judge in its order dated 29th June, 1993. On the facts and circumstances of the case, cost on the parties."

4. Mr.B.Y.Mankad, learned advocate for the respondent has relied upon the judgment of the Hon'ble Apex Court in the case of V.Kasturi Vs. Managing Director, State Bank of India, Bombay and another reported in AIR 1999 SC 81 particularly para 17 where the Hon'ble Supreme Court has already considered the case of Dhan Raj vs. State of Jammu & Kashmir (supra) and the Division Bench of the Hon'ble Supreme Court has not only considered the Nakara's case but also the Constitution Bench judgment of the Hon'ble Supreme Court in the case of Indian Ex-Services League vs. Union of India reported in (1991) 2 SCC 104 and also another Constitution Bench judgment of the Hon'ble Supreme Court in the case of Krishena Kumar vs. Union of India reported in AIR 1990 SC 1782 and also another judgment of the Hon'ble Apex Court in the case of All India Reserve Bank Retired Officers Association vs. Union of India reported in AIR

1992 SCW 460; another judgment of the Hon'ble Apex Court in the case of State of Punjab vs. Justice S.S.Dewan (Retired Chief Justice) reported in (1997) 4 SCC 569 and in para 21 and 22 the Hon'ble Supreme Court has laid down the ratio in the said judgment which reads as under:

"Para.21 If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara's case (AIR 1983 SC 130) (Supra) would cover this category of cases.

"Para 22. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently be amendment of relevant pension Rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme."

4.(A) Learned counsel for the respondent Mr.B.Y.Mankad has also relied upon another recent judgment of the

Hon'ble Supreme Court in the case of SUBRATA SEN AND OTHERS vs. UNION OF INDIA AND OTHERS reported in (2001) 8 SCC 71 in para 14 the Hon'ble Supreme Court has observed as under:

"In our view the aforesaid para does not in any way support the contention of the respondents. On the contrary, on parity of reasoning, we would also reiterate that let us be clear about this misconception. Firstly, the Pension Scheme including the liberalised scheme available to the employees is non-contributory in character. Payment of pension does not depend upon Pension Fund. It is the liability undertaken by the Company under the Rules and whenever becomes due and payable, is to be paid. As observed in Nakara case pension is neither a bounty, nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the past services rendered. It is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in the lurch. May be that in the present case, the trust for Pension Fund is created for income tax purposes or for smooth payment of pension, but that would not affect the liability of the employer to pay monthly pension calculated as per the Rules on retirement from service and this retirement benefit is not based on availability of Pension Fund. There is no question of pensioners dividing the Pension Fund or affecting the pro rata share on addition of new members to the Scheme. As per Rule 1 quoted above, an employee would become a member of the Fund as soon as he enters into a specified category of service of the Company. Under Rule 8, trustees may withhold or discontinue a pension or annuity or any part thereof payable to a member or his dependants, and that pension amount is non-assignable. Further, the payment of pension was the liability of the employer as per the Rules and that liability is required to be discharged by the Union of India in lieu of its taking over of the Company."

4.(B) After referring the judgment of the Hon'ble Apex Court in All India Reserve Bank Retired Officers Assn. v. Union of India in para 19 the Hon'ble Supreme Court has observed as under:

"Same is the position in the present case. As observed in the aforesaid case, in case of an employee governed under the Pension Scheme, relations with the employer merely undergo a change, but are not snapped altogether. There is no new scheme of payment of pension, but it is only a revision of the existing Pension Scheme. Under the new Pension Scheme, pension is required to be paid on the basis of 40 per cent of the average of the last 10 months' salary including average dearness allowance drawn by the officer over the last 10 months of his service instead of earlier 40 per cent of the average annual basic salary for the last five years of service immediately preceding the date of retirement."

5. Learned advocate for the petitioner has also relied upon the subsequent resolution dated 23rd September, 1996, where the Government after considering the case of this Court in the case of M.S.University, granted the benefit of pension.

6. In view of the aforesaid two decisions of this Court as well as the judgments of the Hon'ble Apex Court, I am of the view that looking to the peculiar facts and circumstances of the case if I direct the respondents to consider the case of the petitioner in light of all these principles particularly when Government itself has stated that the case of giving pension to non-teaching staff from 1.1.1973 is under consideration of the Government's letter dated 9th January, 1995.

7. In view of the same, I hope and trust that the respondent will consider the case of the petitioner kindly and sympathetically in view of the peculiar facts and circumstances of the case and after considering the judgment of this Court which I have referred in this behalf. If the Government decides to give pension to the petitioner after considering the fact that the petitioner is entitled to pension from 1.1.1973, all other consequential benefits may also be given to the petitioner in this behalf. However, looking to the peculiar facts and circumstances of the case, the Government may decide all other benefits in this behalf. The petitioner is entitled to make representation which is in the form of petition or any other additional submissions, he can do so by 8th March, 2002, and the Government will decide the same by 15th April, 2002, in this behalf.

8. In view of the aforesaid observations and directions, the petition is disposed of with no order as to costs. Rule is discharged.

(K.M. Mehta, J.)

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